IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 31666 of 2007(T)

PETITIONER:

MOIDEENKUTTY HAJI, ANNACHANPALLI HOUSE,
THALAKADATHOOR, THIRUR, MALAPPURAM DISTRICT.

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS:

---

1. CHERIYAMUNDAM GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
CHERIYAMUNDAM P.O., TIRUR, PIN - 676 103.

2. THE SECRETARY,
CHERIYAMUNDAM GRAMA PANCHAYATH,
CHERIYAMUNDAM P.O., TIRUR, PIN - 676 103.

3. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT
INSTITUTIONS, REPRESENTED BY ITS REGISTRAR,
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM.

R1 & R2 BY ADV. SRI.G.UNNIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 31666 OF 2007

Dated this the 7th day of December, 2007

JUDGMENT

The grievance of the petitioner is that Exts.P3 and P4 revision petitions which were filed by the petitioner before the tribunal for Local Self Government Institutions have been returned by the Tribunal on the ground that the petitioner's remedy against Ext.P1 order is an appeal to the council of the Panchayat. According to the petitioner, through Ext.P1 the Secretary of the Panchayat intimates the petitioner of a decision taken by the committee of the Panchayat and it cannot be said that Ext.P1 is authored by the Secretary. Remedy against Ext.P1, according to the petitioner, is an appeal under Section 271 (5) of the Panchayat Raj Act.

2. Sri.G.Unnikrishnan, counsel for the petitioner submits by referring to Clauses A & B of Section 271(5) that appeals under Section 271(5) are to be confined to assets, demands and collection of tax fee or cess and to grant permission and licences for trades, factories, markets and other establishments. The present appeal does not come within Clause A & B of Sub Section 5 of Section 275. Counsel further referred to Rule 8 of the Tribunal for Kerala Local Self Government Institutions Rules, 1999 which have been framed by the Government

invoking the rule making powers under Section 279(2). He also drew my attention to entry No.3 in the schedule which is annexed to the above rules and submitted that an appeal may lie to the Tribunal under Rule 8 of the Tribunal Rules. He further pointed out that the petitioner not having challenged Ext.P1 at the appropriate time, the appeal is not clearly barred by limitation since the same has not been filed even within the period of 120 days. So, according to him, even if this court directs the Tribunal to entertain the appeal, the same should be subject to the provisions regarding limitation.

3. I have considered the rival submissions addressed at the Bar. It is not disputed that Ext.P2 judgment was attained finality. Under Ext.P2 judgment this court had given permission to the petitioner to invoke his statutory remedies against Ext.P5. As already noticed, since Ext.P1 which was Ext.P5 in Ext.P2 is an order actually passed by the council of the Panchayat, the statutory remedy against the same is a revision before the Tribunal. The intention of this Court in passing Ext.P2 was to have the issue adjudicated by the statutory appellate or revisional authority. The view of the Tribunal that Ext.P1 is issued by the Secretary of the Panchayat is erroneous.

I allow the Writ Petition and direct the Tribunal to entertain Exts.P3 and P4 if they are re-submitted by the petitioner within one

week of the petitioner receiving a copy of this judgment, register them on file and dispose of them in accordance with law after hearing both sides. Considering the delay which has been caused in the matter already, there will be a direction to the Tribunal to dispose of the revision at the earliest and at any rate within three months of registering the same on its files.

PIUS C. KURIAKOSE, JUDGE

btt